

Environmental Offsets

Frequently asked questions relating to the planning framework (general)

FACT SHEET

Prescribed environmental matters and mapping

What are prescribed environmental matters?

A prescribed environmental matter is any of the following:

- a matter of national environmental significance (MNES)
- a matter of State environmental significance (MSES)
- a matter of local environmental significance (MLES).

The *Environmental Offsets Regulation 2014* (EO Regulation) further defines these matters.

What can local government prescribe as MLES? What methodology should councils use to identify this?

The State does not mandate the methodology for determining MLES; however the EO Regulation does specify that MLES cannot be MSES or MNES.

The identification of MLES is the responsibility of a local government and provides flexibility for local government to identify locally significant environmental matters. Regardless of the methodology chosen, identification of MLES should be scientific, robust, well documented and legally defensible and must be approved by the State as part of the state interest review and approval of a local government planning scheme through the process outlined in Statutory Guideline 04/14: Making and amending a local planning instrument.

Can local government map 'general' biodiversity areas within their planning scheme?

Yes. Mapping of general biodiversity areas would be suitable for inclusion in the strategic framework of a local government planning scheme. However where a biodiversity map relates to a table of assessment (e.g. overlay and associated code);

MSES and MLES should be able to be clearly differentiated for the purposes of development assessment and any offset assessment criteria.

The specific MLES values which could be offset under the local planning scheme should not be the '*same, or substantially the same*' as any MSES or MNES, in accordance with the EO Regulation.

There is inconsistency between the definition of MSES contained in the State Planning Policy (SPP) and the EO Regulation. What mapping of MSES should local government use when making or amending a planning scheme?

The definition of MSES contained in the EO Regulation includes a greater number of MSES than the SPP and is only for the purposes of state offsets, not local government plan making.

When making or amending a planning scheme, local government should use the MSES mapping shown on the SPP Interactive (plan making) Mapping System as well as the definition of MSES contained in the SPP, where specific values have not been mapped. As a guide, the method for mapping MSES (as defined in the SPP) is available online at <http://www.ehp.qld.gov.au/land/natural-resource/method-mapping-mses.html>.

Importantly, where a local government has more accurate local information and wants to expand on the State's mapping for a value defined as MSES, these additional areas/values remain MSES and cannot be expressed as MLES.

Can areas containing MLES overlap with areas containing MSES and/or MNES?

Yes. The environmental offsets framework does not preclude a local government from mapping areas of MLES that overlap with MSES or MNES; however this must be for a different environmental value to the MSES or MNES (i.e. not the '*same, or substantially the same*' prescribed environmental matter).

What is meant by the 'same, or substantially the same' prescribed environmental matter?

The '*same, or substantially the same*' prescribed environmental matter refers to broad categories of environmental values. For example, a RAMSAR wetland under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is the '*same, or substantially the same*' prescribed environmental matter as a wetland protection area or similar under state/local planning instruments.

Habitat for a locally significant species (that is not the '*same, or substantially the same*' as MSES or MNES) may be mapped by a local government as MLES.

Significant residual impact

What is a 'significant residual impact'?

Section 8 of the *Environmental Offsets Act 2014* (EO Act) defines a 'significant residual impact' (SRI). A non-statutory guideline has been prepared to further assist decision makers, industry and the community in determining what constitutes a SRI on MSES. The guideline will include specific information regarding how to determine a SRI in the context of the planning decisions under the *Sustainable Planning Act 2009* and specifically the State development assessment provisions.

The Commonwealth Government *Significant Impact Guidelines* provide overarching guidance on determining whether an action is likely to have a 'significant impact' on MNES protected by the EPBC Act. The Commonwealth guidelines are available at <http://www.environment.gov.au/epbc/what-is-protected>.

Is a local government required to use the same criteria to determine a SRI for MLES that the State government uses for MSES?

No. The SRI guideline prepared by the State government relates only to impacts on MSES. A local government has the ability to develop their own, more specific criteria for 'significant residual impacts' on MLES. Any local government guideline should be made publicly available.

Imposing offset conditions

When can an environmental offset condition be imposed?

The head of power for an administering agency to impose an environmental offset condition is provided for under another Act, for example the *Sustainable Planning Act 2009*, and not the EO Act.

Under the EO Act, an environmental offset condition may be imposed by an administering agency if it is satisfied that an activity will, or is likely to have a 'significant residual impact' on a prescribed environmental matter under its jurisdiction. However, offsets should only be imposed, where a 'significant residual impact' on a prescribed matter continues to exist after all reasonable on-site mitigation measures for the activity have been, or will be, undertaken.

Can a local government impose an offset condition for MSES?

A local government may only impose an offset condition for the following:

- MLES, or
- another prescribed environmental matter that is further prescribed by regulation.

A local government cannot impose an offset condition for those MSES that are not currently assessed by the State Assessment and Referral Agency (SARA), unless these are further prescribed by a regulation as being devolved to local government.

Currently, koala habitat in South East Queensland under the Koala Conservation State Planning Regulatory Provision (Koala SPRP) is the only MSES which local government may assess and (if appropriate/required) impose an environmental offset condition for, on behalf of the State government. The *Environmental Offsets (Transitional) Regulation*

2014 stipulates that any offsets imposed under the Koala SPRP must now be in accordance with the EO Act.

Can a local government impose an offset condition for an activity that has a 'significant residual impact' on MLES, and this is in an area which is immediately adjacent to an area containing MSES?

A local government can only impose an offset condition for MLES that is already identified in a local government planning scheme (and approved by the State). MLES must not be the 'same, or substantially the same' matter as the MSES (including the MSES in the immediately adjoining area).

How will offsets apply to land with multiple matters of environmental significance?

Where a site contains multiple prescribed environmental matters, the significance of the impact on each environmental matter may be different and therefore needs to be individually assessed by the relevant administering agency. However, multiple offset conditions should not be imposed for the 'same, or substantially the same' prescribed environmental matter.

Are decisions regarding the imposition of environmental offset conditions recorded?

Yes. Both State and local government are required to keep a register of offsets conditions and legally secured offset areas (section 90, EO Act). For MSES, the Department of Environment and Heritage Protection will be the custodian of the state register. Local government will be responsible for maintaining their own register. Offset registers must be made available for public inspection.

Commonwealth/State referral and assessment

What constitutes an 'assessment' by the Commonwealth Government under the EPBC Act, for the purposes of the environmental offsets framework?

Under the EPBC Act, any action which has, will have, or is likely to have a significant impact on MNES must be referred to the relevant Commonwealth Minister prior to commencing the action. During the referral stage, the Commonwealth Minister will decide whether assessment and approval is required under the EPBC Act and may determine that an action is either a:

- *controlled action*;
- *not a controlled action (NCA)*; or
- *NCA, if taken in a particular manner*.

A *controlled action* is likely to have a significant impact on MNES and is required to enter the subsequent assessment and approval stage. The decision to approve or refuse a *controlled action* would provide evidence that the assessment has been undertaken.

The decision of *NCA* or *NCA - particular manner* is an outcome of the Commonwealth referral stage only and does not constitute an 'assessment' for the purposes of the environmental offsets framework on the basis that "the EPBC Act does not allow for

any beneficial impacts, such as offsets, to be considered at the referral stage” (EPBC Act Environmental Offsets Policy, section 5.1 - Referral stage, page 11).

Can a state or local government impose an offset condition for an activity that has been referred to the Commonwealth Government and is deemed to be a controlled action under the EPBC Act?

No. A *controlled action* is an action which is likely to have a significant impact on MNES and requires assessment and approval. A state or local government cannot impose an offset condition for a prescribed activity that has the ‘*same, or substantially the same*’ impact on the ‘*same, or substantially the same*’ matter as the MNES, if it has already been assessed as a ‘*controlled action*’ under the EPBC Act.

Can a state or local government impose an offset condition for an activity that has been referred to the Commonwealth Government and is deemed to be either a ‘not controlled action’ (NCA) or a ‘NCA – particular manner’ under the EPBC Act?

Yes. The Commonwealth’s decision of *NCA* or *NCA - particular manner* is an outcome of the Commonwealth referral stage only and does not involve an assessment (or the consideration of offsets) which is equivalent to the assessment (and approval) process undertaken through the Integrated Development Assessment System (IDAS) under the *Sustainable Planning Act 2009*.

A state or local government may impose an offset condition on a prescribed activity that is for the ‘*same, or substantially the same*’ impact and prescribed environmental matter as the MNES in this instance.

How does the environmental offsets framework minimise duplication, if Commonwealth decisions of a ‘not controlled action’ (NCA) and ‘NCA – particular manner’ can be assessed by state/local government?

The *Environmental Offsets Act 2014* seeks to minimise duplication in the imposition of offset conditions where these relate to the ‘*same, or substantially the same*’, impact and the ‘*same, or substantially the same*’, prescribed environmental matter. Duplication in State and Commonwealth referral and assessment processes may be reduced through a future approval bilateral.

What happens if the Commonwealth Government imposes an offset condition on a project for a particular MNES after the state or local government has assessed and approved that same project and imposed an offset condition on a matter that is the ‘*same or substantially the same*’ as the MNES?

If the Commonwealth imposes the offset condition after the state or local government has already imposed the offset condition on the authority, it is up to the authority holder to apply to the state or local government to remove the ‘duplicate’ offset condition. This is permitted under the section 25A of EO Act.

If a higher level government jurisdiction ‘assesses’ but does not impose an offset condition for a particular prescribed environmental

matter, can a lower level government jurisdiction impose an offset condition for that same matter?

If the Commonwealth deems an action to be a *controlled action* and does not impose an offset condition for impacts on certain MNES, a State or local government cannot impose an offset condition for any matter that is the *'same, or substantially the same'* as that MNES.

A local government may impose an offset condition for certain MSES if authorised by regulation to impose the offset condition for that MSES under section 15(4) of the *Environmental Offsets Act 2014*.

Where can I obtain further information regarding offsets and the planning framework?

For further information on environmental offsets in the context of the planning framework please contact:

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